

ATTACHMENT B

AB 1903 TEXT AND COMMITTEE ANALYSIS

AMENDED IN SENATE JUNE 17, 2004
AMENDED IN SENATE JUNE 8, 2004
AMENDED IN ASSEMBLY MAY 11, 2004
AMENDED IN ASSEMBLY APRIL 12, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1903

Introduced by Assembly Member Maddox

February 9, 2004

An act to add Section 65008.7 to the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 1903, as amended, Maddox. Discrimination: land use: religion.

Existing law, the Unruh Civil Rights Act, prohibits discrimination in business establishments and housing on the basis of, among other things, religion. Existing law also prohibits local governments from denying individuals or groups the enjoyment of land use on that basis, as specified.

This bill would require local government actions relative to land use affecting religious institutions and assemblies, or religious uses of private residences, to use no less favorable standards than those used for actions affecting *similarly situated* nonreligious institutions and assemblies and nonreligious uses of private residences.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

AB 1903

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The people of the State of California do enact as follows:

- 1 SECTION 1. Section 65008.7 is added to the Government
2 Code, to read:
3 65008.7. Any action pursuant to this title by any city, county,
4 city and county, or other local governmental agency that affects
5 religious institutions and assemblies, or religious uses of private
6 residences, shall use standards that are no less favorable than the
7 standards used by that agency for actions that affect *similarly*
8 *situated* nonreligious institutions and assemblies, including, but
9 not limited to, assembly halls, lodges, nightclubs, restaurants, and
10 theaters, and nonreligious uses of private residences.

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SENATE LOCAL GOVERNMENT COMMITTEE
Senator Tom Torlakson, Chair

BILL NO: AB 1903 HEARING: 6/16/04
AUTHOR: Maddox FISCAL: No
VERSION: 6/8/04 CONSULTANT: Detwiler

LAND USE DECISIONS AND RELIGIOUS INSTITUTIONS

Background and Existing Law

The police power is the inherent authority of sovereign governments to regulate private behavior, consistent with constitutional rights and procedures. The California Constitution delegates the police power to cities and counties to "make and enforce within [their] limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." Zoning and conditional use permits are examples of how local officials use their police powers to regulate land uses.

The Planning and Zoning Law declares a local land use action "null and void" if it denies any individual or group the enjoyment of a land use because of various listed characteristics, including religion.

Land use disputes have resulted in charges of discrimination based on religious activities, including an Orthodox Jewish congregation that meets in a residence, building a Sikh temple on agricultural land, and siting a Christian church on commercial property.

Proposed Law

When a city, county, or city and county's acts under the Planning and Zoning Law on decisions that affect religious institutions and assemblies, and religious uses of private residences, Assembly Bill 1903 requires the agency to use standards that are no less favorable than the standards it uses for actions that affect nonreligious institutions and assemblies.

AB 1903 lists assembly halls, lodges, nightclubs, restaurants, and theaters and nonreligious uses of private residences as examples of nonreligious institutions and assemblies.

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1. For heaven's sake ! The practice of American democracy requires balancing private rights and public power. State and local governments have clear constitutional authority to regulate land in the public interest. Individuals and groups have clear constitutional rights to the free exercise of religion. This balancing act becomes visible when counties and cities apply their zoning ordinances to private property that's used for worship and other expressions of religious faith. What may appear to be a simple zoning matter can improperly interfere with the free exercise of religious expression. AB 1903 tackles this tension between the police power and religious freedom by requiring local officials to use "no less favorable" standards when their land use actions affect religious institutions.

2. Compared to what ? The "no less favorable" test in AB 1903 promises simplicity, but it will be tough for local officials to apply. Planning commissioners, city councils, and county supervisors never make land use decisions in the abstract; they apply broad policies to specific properties in specific locations. How a city applies its land use standards to a 500-seat theater on a downtown commercially-zoned lot differs from how the city applies the same standards to a 500-seat theater proposed for an agriculturally-zoned parcel on the edge of town. The city might reduce its parking standards for the downtown location because on-street parking already exists, while it might require the theater on the edge of town to provide off-street parking. Because location and context are essential factors in making land use decisions, the Committee may wish to consider an amendment to AB 1903 that requires local officials to compare religious institutions with "similarly situated" nonreligious institutions.

3. What the federal law says . The First Amendment to the U.S. Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The Free Exercise Clause applies to the states under the Fourteenth Amendment. After a decade of intense debate and reactions to court decisions,

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Congress passed the Religious Land Use and Institutionalized Persons Act of 2000. RLUIPA prohibits state and local governments from imposing or implementing

land use regulations that impose a substantial burden on religious exercise unless the government demonstrates that the regulation furthers a compelling governmental interest and is the least restrictive means of furthering that compelling interest. ATTACHMENT B
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4. Legislate or litigate ? Litigants, including the Becket Fund, actively use RLUIPA to challenge state and local land use decisions that affect religious activities. Plaintiffs have filed RLUIPA challenges against California counties and cities. In light of active federal litigation, the Committee may wish to consider whether the Legislature needs to go beyond the current anti-discrimination declaration that already exists in the Planning and Zoning Law.

5. Legislative history . AB 1903 is not the first bill that challenges legislators to balance the police power and religious rights. The Committee passed SB 38 (Baca, 1999) and SB 142 (Haynes, 2001) which would have imported provisions of RLUIPA into state statutes; neither bill passed the Senate Judiciary Committee. The Assembly was the source of other, unsuccessful measures: ACA 24 (Baca, 1997), AJR 34 (Baca, 1997), AB 1617 (Baca, 1998), AB 600 (Maddox, 2004).

6. Double-referred . The Senate Rules Committee has ordered that AB 1903 be double-referred to the Senate Judiciary Committee.

Assembly Actions

Assembly Local Government Committee: 8-0
Assembly Judiciary Committee: 8-0
Assembly Floor: 72-0

Support and Opposition (6/10/04)

Support : Becket Fund, Capitol Resource Institute,
Responsible Citizens Inc., Seventh-Day Adventist Church

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State Council.

Opposition : Unknown.

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